

WS-15J

May 24, 1999

Glenn Stoddard, Esq.
Garvey & Stoddard, S.C.
Attorneys at Law
634 W. Main Street, Suite 201
Madison, Wisconsin 53703

RE: Crandon Mine Project and Permit (NPDES and UIC) Issues

Dear Mr. Stoddard:

Thank you for your letters of February 22, 1999 and May 4, 1999. I wish to thank you for the information that you attached to the May letter including the documents regarding the recent U.S. District Court, Eastern District of Wisconsin, decision denying the State of Wisconsin's challenge to the United States Environmental Protection Agency's (EPA) grant of "treatment as state" (TAS) status to the Tribe, for purposes of establishing water quality standards, pursuant to Section 1377(e) of the federal Clean Water Act. I also wish to thank you for providing, upon my request, the U.S. Army Corps of Engineers (COE) and the Wisconsin Department of Natural Resources (WDNR) with the two previously confidential Sokaogon Chippewa Community (Mole Lake) reports regarding a wild rice survey and a water bird survey. These reports will be helpful in providing the COE and WDNR with important tribal information.

In the February letter you shared with me your concern that you and your client, Mole Lake, believe that the Nicolet Mineral Company (NMC) needs to apply for a Underground Injection Control (UIC) Permit due to its proposal to backfill the underground mine stopes with pyritic paste backfill derived from the mine tailings. You cited that you are concerned about protecting the Tribe's drinking water resources. In the May letter, you reiterated your concern regarding the UIC permit and also, shared your beliefs that because of the above referenced court decision, that it is the Tribe's position that the mining company must be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit from EPA under the federal Clean Water Act (33 U.S.C. Sections 1341 and 1342) that complies with the Tribe's stringent, "non-degradation" water quality standards.

I have made several inquiries to our Water Division's UIC Branch and to other U.S. EPA Regional Mining Coordinators as to the applicability of a UIC permit to the Crandon Mine Project's proposed mine backfill. Region V's UIC Branch states that the mine backfill activity is considered as a UIC well as defined at 40 CFR 146.5(e)(8), which reads, "sand backfill and other

backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not.” This section is pertinent to the Crandon Mine proposal. At present, there are no specific regulations pertaining to Class V wells and thus these facilities are regulated under the broad general authority of the UIC program. EPA is currently in the process of conducting a study of the risk of many types of Class V wells, including backfill wells as defined above, and it is possible that additional more specific regulations may be developed for some types of Class V wells. This study of the impacts of Class V wells is expected to be published by EPA in September 1999 and the Agency has until May 2001 to propose new regulations as deemed appropriate. Since the Crandon Mine project is not located within a tribal reservation and since the State of Wisconsin has UIC Program delegation, the State has the UIC authority for this project. Under the approved State UIC Program, the WDNR will regulate this “well” under existing state authorities to assure that Underground Sources of Drinking Water (USDW) are not endangered. This is expected to involve the State’s mining laws, that are already part of this project, although the State does have the authority to require a specific permit if necessary. In the Direct Implementation program administered by EPA in the States of Indiana, Michigan and Minnesota, mine backfill wells have been authorized by rule. This practice seems to be standard throughout the other Regions as well. The Region’s UIC Branch is currently discussing this issue with appropriate State UIC staff and will continue to coordinate this issue with them.

With regard to the NPDES permit requirements of the proposed mine project, WDNR, the authorized NPDES permitting authority in the State of Wisconsin, is required to insure that any such permits contain requirements necessary to achieve downstream water quality standards. Consequently, although the proposed Crandon Mine Project’s mitigation discharges will not be within the Mole Lake Reservation, WDNR must address Mole Lake water quality standards, including anti-degradation requirements, since the Reservation lies immediately downgradient from the project site (down stream along Swamp Creek). EPA recognizes that the State of Wisconsin has challenged EPA’s approval of those standards in federal district court. However, until EPA’s decision to approve those standards is overturned and either Mole Lake adopts revised standards or EPA promulgates new standards for Mole Lake, the standards previously adopted by Mole Lake are the applicable standards that must be considered by WDNR in issuing NPDES permits. EPA notes that the WDNR has stated in their comments to the mining company (WDNR Surface Water Mitigation Plan comment letter dated March 2, 1999 to G. Reid, NMC - Comment #14), that NMC’s Surface Water Mitigation Plan needs to be revised to indicate that a WPDES (Wisconsin Pollutant Discharge Elimination System) permit would be required for all necessary mitigation discharges, including those supplying hard water to streams from wells. In addition, in a letter dated March 31, 1999, (EPA Surface Water Mitigation Plan and the Monitoring Plan Comments to Mr. Ralph Augustin, COE - Comment #9), EPA-NPDES Permit writers determined that a discharge permit is required for these mitigation discharges.

It has not been determined if an NPDES permit will be required for the proposed Soil Absorption System (SAS). EPA’s Water Division’s NPDES Branch will continue to be involved in this project and will continue to work with the State on this NPDES issue. The SAS may also fall under the category of being a Class V well and is being discussed by the EPA-UIC Branch

and the WDNR.

I hope that the above answered your questions. Again, I wish to thank you for your input on these matters and look forward to discussing these issues with you further. If you have any other questions or comments, please contact me at (312) 886-7252, or the EPA staff attorney for this matter, Mr. Tom Turner, at (312) 886-6613.

Sincerely,

Daniel J. Cozza, Crandon Mine Project Manager
U.S. Environmental Protection Agency

cc: R. McGeshick, Mole Lake Chairman
R. Ferdinand, Mole Lake
C. Hauger, COE
B. Tans, WDNR
K. Fish, Menominee Tribe
C. Hansen, FCP
G. Bunker, SBM
S. Dodge, WI-IEL
G. Reid, NMC

bcc: G. Prichard, ORC
T. Turner, ORC
M. Beaton, NPDES
J. Taylor, UIC
B. Wester, ORC